

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE IAN OSBAND,

Petitioner, No. CIV S-97-0152 WBS KJM

vs. DEATH PENALTY CASE

ROBERT L. AYERS, JR.,
Acting Warden of San Quentin
State Prison,

Respondent. ORDER

On September 20, 2007, the undersigned held a status conference regarding the apparently unavailable portion of the May 2, 2007 transcript of the evidentiary hearing in this matter. Tivon Schardl appeared for petitioner. Tim Brosnan participated telephonically for petitioner. Ward Campbell appeared for respondent. The undersigned has learned since the conference that the court reporter recently provided the paper notes from the May 2, 2007 portion of the evidentiary hearing to courthouse court reporter Kelly O'Halloran. Apparently, these notes also may be inadequate to create a transcript of the proceedings. If counsel have questions about these notes, they may contact Ms. O'Halloran at (916) 448-2712.

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1 Based on discussions with counsel and information received from Ms.

2 O'Halloran, and good cause appearing, IT IS HEREBY ORDERED as follows:

3 1. By the close of business on September 25, 2007, Patricia A. Hernandez,
4 CSR No. 6875, of Diamond Court Reporters shall provide to Kelly
5 O'Halloran: (1) any further paper notes of the May 2, 2007 hearing in this
6 matter, (2) the hard drive, if any, from the steno machine used during the
7 May 2, 2007 hearing, and (3) any other part of the machine or any
8 accessory devices or data storage media that may contain the electronic
9 notes of that proceeding. Ms. O'Halloran may be reached at the number
10 listed above. Ms. O'Halloran shall thereafter maintain all paper notes and
11 anything that may contain electronic notes of the May 2 proceedings until
12 further order of the court.

13 2. By October 4, 2007 each party shall file a statement regarding any material
14 errors in the available transcripts of the evidentiary hearing held from
15 April 23, 2007 through May 2, 2007. Ordinary transcription errors, such
16 as misspellings and confusion regarding words, need not be identified at
17 this point.

18 3. Petitioner's counsel is directed to arrange a meeting to be held by October
19 4, 2007 and to be attended by counsel for both parties, court reporter
20 Patricia A. Hernandez, and courthouse court reporter Kelly O'Halloran to
21 discuss the apparent loss of a portion of the May 2, 2007 transcript.

22 4. Ms. Hernandez is warned that her failure to cooperate as directed in
23 paragraphs 1 and 3 above shall be considered a violation of this court's
24 order and may subject her, or Diamond Court Reporting, to sanctions.

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5. The undersigned will hold a status conference on October 24, 2007 at 11:00 a.m. to discuss the May 2 transcript issues. If Mr. Brosnan wishes to participate, he shall do so by telephone.
6. In addition to normal service of this order upon counsel for petitioner and respondent, the Clerk of the Court is directed to serve it upon Patricia A. Hernandez, Diamond Court Reporters, 1107 2nd Street, # 210, Sacramento, CA 95814 by U.S. Mail and by fax at (916) 442-2783.

DATED: September 20, 2007.

U.S. MAGISTRATE JUDGE